REMARKS

Claims 21-36 are pending in this application, with Claims 21, 24-25 and 30 amended and Claims 1-20 canceled. The Applicant respectfully requests reconsideration and review of the application in view of the amendments and the following remarks. By the foregoing amendments, no new matter has been added.

Before addressing the merits of the rejections based on prior art, a brief description of the present invention is provided. The present invention provides a system and method of improving bandwidth efficiency in a computer network. In one embodiment of the present invention, the computer network includes a plurality of servers that are adapted to communicate with a plurality of user computers over a communication link. See, e.g., Fig. 1.

In another embodiment of the present invention, a first application is operably associated with the communication link and a second application is operably associated with each one the plurality of servers. Specifically, the first application is adapted to (1) monitor bandwidth usage of the communication link, (2) distribute a rule set to each of the plurality of servers, wherein the rule set defines the rules for serving data depending on the file type of the data and the bandwidth usage of the communication link, and (3) informing each of the plurality of servers of a current state of the bandwidth usage of the communication link. The second application is adapted to (1) characterize files stored on the plurality of servers according to their "type" (e.g., file name, extension, etc.) and (2) serve files from each of the plurality of servers over the communication link in compliance with the rule set. By using ***two applications***, bandwidth usage can be monitored ***downstream*** (e.g., at a common communication link) and traffic control measures can be implemented ***upstream*** (e.g., at the source of the data that is transmitted through the common communication link). This is in contradistinction to prior art systems that use a ***single application*** at a ***single location*** to both monitor bandwidth usage and control traffic.

The Examiner rejected Claims 21-36 under 35 U.S.C. § 102(e) as being anticipated by Rakoshitz et al. (Rakoshitz, U.S. Pat. No. 6,578,077). The Applicant respectfully traverses these rejections.

Rakoshitz is directed toward a bandwidth-profiling tool for monitoring and allocating bandwidth on a telecommunication network. According to Rakoshitz, a ***single tool*** (or application) is used to both monitor and control communications. See, e.g., col. 15, l. 57 – col. 16, l. 35 ("In general, a flow of information or data or packets of information enter a *gateway point*, where the present tool sits.") (emphasis added); see also, col. 9, ll. 39-48 ("[The] traffic management tool 208 performs inbound and outbound monitoring *and* control of flows by application, source address, destination address, [etc.] ...") (emphasis added). Rakoshitz provides that the tool (or application) can either "sit" (or reside) on a server or as a stand-alone application in the network data path. See, e.g., Figs. 1 and 4-7; col. 9, ll. 18-37 ("In a preferred embodiment, the bandwidth management tool 208 can be loaded onto a server without any changes to hardware. In an alternate preferred embodiment, the tool can install, configure, and operate on a conventional IBM compatible PC running and operating system ... .").

Rakoshitz, however, fails to disclose or suggest the use of ***multiple tools*** (or applications), or the concept of monitoring bandwidth usage ***upstream*** and controlling traffic ***downstream***. Instead, Rakoshitz provides the use of a ***single "gateway point"*** (col. 15, l. 57-60) for monitoring and controlling communications. Such a system is disadvantageous regardless of where the "gateway point" is located. For example, if the "gateway point" is located at an individual server (e.g., downstream), it cannot monitor bandwidth usage of the entire computer network. By way of another example, if the "gateway point" is located at a common communication link (e.g., upstream), it can create a new bottleneck in the computer network. This is because data that passes through the "gateway point" must be processed (e.g., classified, measured, time stamped, etc.). See Fig. 8 and col. 15, l. 57 – col. 16, l. 10.

The Applicant stated in his February 15, 2005 Response at page 7 that

"Rakoshitz fails to disclose or suggest separate software distributed as defined by Claim 29, with monitoring and communicating functions performed in association with a communication link, and characterizing and serving functions, including implementation of bandwidth management rules, at the server level." In response, the Examiner states that "Rakoshitz clearly states on col. 9, lines 24-29, that the bandwidth management tool (software) is loaded onto the 'server' from where it performs the management and monitoring functions." June 6, 2005 Office Action, p. 6. The Applicant agrees that Rakoshitz provides that the "gateway point" can be an individual server. What Rakoshitz fails to disclose or suggest, however, is the use of ***multiple tools*** (or applications), wherein a first tool is used to monitor bandwidth usage ***upstream*** and a second tool is used to control traffic ***downstream***.

More particularly, Rakoshitz fails to disclose or suggest "[a] system for operating a plurality of servers to improve bandwidth efficiency in a computer network, the system comprising: ***a plurality of servers operable to connect to a computer network through a communication link*** having a finite bandwidth; and ***first program instructions operably associated with the communication link to perform the steps of (a)*** monitoring bandwidth usage of the communication link, ***(b)*** distributing a rule set to each of the plurality of servers, wherein the rule set defines rules for limiting serving of data from each of the plurality of servers depending on file type and a current state of the bandwidth usage, and ***(c)*** informing each of the plurality of servers of a current state of the bandwidth usage; and ***second program instruction operably associated with each of the plurality of servers to perform the steps of (d)*** characterizing files stored in operable association with each of the plurality of servers according to type, and ***(e)*** serving the files from each of the plurality of servers to the wide area network via the communication link in compliance with the rule set, so as to limit serving of specified filed types from the servers during periods when the bandwidth usage exceeds a threshold amount relative to a finite bandwidth of the communication link." Therefore, the rejection of independent Claim 29, as well as the rejection of

independent Claim 21, which includes similar limitations, should be withdrawn. Furthermore, the rejections of Claims 22-28 and 30-36, which depend therefrom, should also be withdrawn.

In view of the foregoing, the Applicant respectfully submits that Claims 21-36 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited. If it would be helpful to placing this application in condition for allowance, the Applicant encourages the Examiner to contact the undersigned counsel and conduct a telephonic interview.

To the extent necessary, Applicant petitions the Commissioner for a three-month extension of time, extending to December 5, 2005 (the first business day following December 3, 2005), the period for response to the Office Action dated June 3, 2005. Our check in the amount of $760 is enclosed for the three-month extension of time ($510) pursuant to 37 CFR §1.17(a)(3) and for the Notice of Appeal ($250), which are filed concurrently herewith. The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,

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